IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 359 of 2004.

Decided on: April 23, 2007.

Kamal Kishore

… … … Petitioner.

Versus

Union of India & Ors.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? No.

For the petitioner(s): **Mr. G.D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate.**

For the Respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General of India.**

Rajiv Sharma, Judge (Oral):

This petition is directed against communication dated 9th September, 2003 and communication dated 6th February, 2004.

The brief facts necessary for adjudication of this petition are that the petitioner after successful basic military training and police verification was attested as Rifleman on 1.10.1996 and posted in 7 J&K Rifles on 19th January, 1997. He was given specialized training in Counter Insurgency CARCHURA while posted in Assam.

The crux of the submissions of Mr. G. D. Verma is that the

Whether reporters of local papers may be allowed to see the judgment? No.

Petitioner at the time of enrolment was physically fit and it was only during his employment with the Army that he suffered injuries. Mr. Verma further submits that the disability suffered by the petitioner is attributable to the Army service.

Mr. Sandeep Sharma appearing on behalf of the respondents submits that the impugned orders have been passed in accordance with law and may not be interferred by this Court.

I have perused the records and heard the parties.

It has come on record that the petitioner has suffered spinal injuries and at the time of his boarding out, the medical Board was required to opine with regard to his disability. The respondents have placed on record the copy of communication dated 20the December, 2002, i.e. recommendations of Commanding Officer. It is mentioned at Sr. No.5 that the LMC is attributable to service. The grounds for denial of the disability pension to the petitioner is that he has himself sought discharge from the service. Similar ground has been reiterated in Annexure P-8, dated 6th February, 2004 without taking into consideration the contents of the representation made on behalf of the petitioner. Even though the petitioner has sought discharge from the service, but taking into consideration the disability, it was necessary for the Medical Board to give opinion with regard to disability including the percentage thereof. Sufficient material has been placed on record by the petitioner to substantiate his claim that the injuries suffered by him during the special Commando training are attributable to Military Service. The case of the petitioner was required to be considered conclusively by the respondents after obtaining the opinion of the Medical Board, which

admittedly has not been done by the respondents for determining the claim of the petitioner for disability pension. Accordingly, the writ petition is allowed. The respondents are directed to reconsider the entire case of the petitioner for disability pension wholly uninfluenced by the fact that the petitioner has sought voluntary discharge from Army. The decision will be taken by the respondents within three months from today and a speaking order will be passed while deciding the case of the petitioner.

(Rajiv Sharma)
Judge

April 23, 2007.
(sck)